

76-5-101. "Prisoner" defined.

For purposes of this part "prisoner" means any person who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the Division of Juvenile Justice Services regardless of whether the confinement is legal.

Amended by Chapter 171, 2003 General Session

76-5-102. Assault.

- (1) Assault is:
 - (a) an attempt, with unlawful force or violence, to do bodily injury to another;
 - (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
 - (c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.
- (2) Assault is a class B misdemeanor.
- (3) Assault is a class A misdemeanor if:
 - (a) the person causes substantial bodily injury to another; or
 - (b) the victim is pregnant and the person has knowledge of the pregnancy.
- (4) It is not a defense against assault, that the accused caused serious bodily injury to another.

Amended by Chapter 109, 2003 General Session

76-5-102.3. Assault against school employees.

- (1) Any person who assaults an employee of a public or private school, with knowledge that the individual is an employee, and when the employee is acting within the scope of his authority as an employee, is guilty of a class A misdemeanor.
- (2) As used in this section, "employee" includes a volunteer.

Enacted by Chapter 163, 1992 General Session

76-5-102.4. Assault against peace officer or a military servicemember in uniform -- Penalties.

- (1) As used in this section:
 - (a) "Military servicemember in uniform" means:
 - (i) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or
 - (ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.
 - (b) "Peace officer" means a law enforcement officer certified under Section 53-13-103.
- (2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3) and (4), who:
 - (a) assaults a peace officer, with knowledge that the person is a peace officer,

and when the peace officer is acting within the scope of authority as a peace officer; or
(b) assaults a military servicemember in uniform when that servicemember is on orders and acting within the scope of authority granted to the military servicemember in uniform.

(3) A person who violates Subsection (2) is guilty of a third degree felony if the person:

(a) has been previously convicted of a class A misdemeanor or a felony violation of this section; or

(b) the person causes substantial bodily injury.

(4) A person who violates Subsection (2) is guilty of a second degree felony if the person uses:

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(5) A person who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

(7) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

Amended by Chapter 189, 2014 General Session

76-5-102.5. Assault by prisoner.

Any prisoner who commits assault, intending to cause bodily injury, is guilty of a felony of the third degree.

Enacted by Chapter 32, 1974 General Session

76-5-102.6. Propelling substance or object at a correctional or peace officer -- Penalties.

(1) Any prisoner or person detained pursuant to Section 77-7-15 who throws or otherwise propels any substance or object at a peace or correctional officer is guilty of a class A misdemeanor, except as provided under Subsection (2).

(2) A violation of Subsection (1) is a third degree felony if:

(a) the object or substance is:

(i) blood, urine, or fecal material;

(ii) an infectious agent as defined in Section 26-6-2 or a material that carries an infectious agent;

(iii) vomit or a material that carries vomit; or

(iv) the prisoner's or detained person's saliva, and the prisoner or detained person knows he or she is infected with HIV, hepatitis B, or hepatitis C; and

(b) the object or substance comes into contact with any portion of the officer's face, including the eyes or mouth, or comes into contact with any open wound on the officer's body.

(3) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Amended by Chapter 306, 2013 General Session

76-5-102.7. Assault against health care provider and emergency medical service worker -- Penalty.

(1) A person who assaults a health care provider or emergency medical service worker is guilty of a class A misdemeanor if:

(a) the person knew that the victim was a health care provider or emergency medical service worker; and

(b) the health care provider or emergency medical service worker was performing emergency or life saving duties within the scope of his authority at the time of the assault.

(2) As used in this section:

(a) "Emergency medical service worker" means a person certified under Section 26-8a-302.

(b) "Health care provider" has the meaning as provided in Section 78B-3-403.

Amended by Chapter 3, 2008 General Session

76-5-102.8. Disarming a peace officer -- Penalties.

(1) As used in this section:

(a) "Conductive energy device" means a weapon that uses electrical current to disrupt voluntary control of muscles.

(b) "Firearm" has the same meaning as in Section 76-10-501.

(2) An actor is guilty of an offense under Subsection (3) who intentionally takes or removes, or attempts to take or remove a firearm or a conductive energy device from the person or immediate presence of a person the actor knows is a peace officer:

(a) without the consent of the peace officer; and

(b) while the peace officer is acting within the scope of his authority as a peace officer.

(3) (a) Conduct under Subsection (2) regarding a firearm is a first degree felony.

(b) Conduct under Subsection (2) regarding a conductive energy device is a third degree felony.

Amended by Chapter 222, 2010 General Session

76-5-102.9. Propelling a bodily substance -- Penalties.

- (1) As used in this section, a listed substance or material is:
 - (a) saliva, blood, urine, or fecal material;
 - (b) an infectious agent as defined in Section 26-6-2 of a material that carries an infectious agent; or
 - (c) vomit or a material that carries vomit.
- (2) Any person who knowingly or intentionally throws or otherwise propels any bodily substance or material listed under Subsection (1) at another person is guilty of a class B misdemeanor, except as provided in Subsection (3).
- (3) A violation of this section is a class A misdemeanor if the substance or material propelled is listed in Subsection (1), and:
 - (a) if the substance is the person's saliva, the person knows he or she is infected with HIV, hepatitis B, or hepatitis C; or
 - (b) the substance or material comes into contact with any portion of the other person's face, including the eyes or mouth, or comes into contact with any open wound on the other person's body.
- (4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Enacted by Chapter 153, 2013 General Session

76-5-103. Aggravated assault.

- (1) A person commits aggravated assault if the person commits assault as defined in Section 76-5-102 and uses:
 - (a) a dangerous weapon as defined in Section 76-1-601; or
 - (b) other means or force likely to produce death or serious bodily injury.
- (2) (a) A violation of Subsection (1) is a third degree felony, except under Subsection (2)(b).
- (b) A violation of Subsection (1) that results in serious bodily injury is a second degree felony.

Amended by Chapter 193, 2010 General Session

76-5-103.5. Aggravated assault by prisoner.

Any prisoner who commits aggravated assault not amounting to a violation of Section 76-3-203.6 is guilty of:

- (1) a second degree felony if no serious bodily injury was intentionally caused;
- or
- (2) a first degree felony if serious bodily injury was intentionally caused.

Amended by Chapter 102, 2006 General Session

76-5-104. Consensual altercation.

In any prosecution for criminal homicide under Part 2 of this chapter or assault, it is no defense to the prosecution that the defendant was a party to any duel, mutual

combat, or other consensual altercation if during the course of the duel, combat, or altercation any dangerous weapon as defined in Section 76-1-601 was used or if the defendant was engaged in an ultimate fighting match as defined in Section 76-9-705.

Amended by Chapter 83, 1997 General Session

76-5-105. Mayhem.

(1) Every person who unlawfully and intentionally deprives a human being of a member of his body, or disables or renders it useless, or who cuts out or disables the tongue, puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

(2) Mayhem is a felony of the second degree.

Enacted by Chapter 196, 1973 General Session

76-5-106. Harassment.

(1) A person is guilty of harassment if, with intent to frighten or harass another, he communicates a written or recorded threat to commit any violent felony.

(2) Harassment is a class B misdemeanor.

Amended by Chapter 300, 1995 General Session

76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.

(1) As used in this section:

(a) "Conviction" means:

- (i) a verdict or conviction;
- (ii) a plea of guilty or guilty and mentally ill;
- (iii) a plea of no contest; or
- (iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

(A) approaches or confronts a person;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

(D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;

(E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person; or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to

Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d) or (e).

(9) (a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and

members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15) (a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

Amended by Chapter 383, 2012 General Session

76-5-107. Threat of violence -- Penalty.

(1) A person commits a threat of violence if the person threatens to commit any offense involving bodily injury, death, or substantial property damage, and acts with intent to place a person in fear of imminent serious bodily injury, substantial bodily injury, or death.

(2) A violation of this section is a class B misdemeanor.

(3) It is not a defense under this section that the person did not attempt to or was incapable of carrying out the threat.

(4) A threat under this section may be express or implied.

(5) A person who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Amended by Chapter 334, 2010 General Session

76-5-107.3. Threat of terrorism -- Penalty.

(1) A person commits a threat of terrorism if the person threatens to commit any offense involving bodily injury, death, or substantial property damage, and:

(a) (i) threatens the use of a weapon of mass destruction, as defined in Section 76-10-401; or

(ii) threatens the use of a hoax weapon of mass destruction, as defined in Section 76-10-401; or

(b) acts with intent to:

(i) intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government;

(ii) prevent or interrupt the occupation of a building or a portion of the building, a place to which the public has access, or a facility or vehicle of public transportation operated by a common carrier; or

(iii) cause an official or volunteer agency organized to deal with emergencies to take action due to the person's conduct posing a serious and substantial risk to the general public.

(2) (a) A violation of Subsection (1)(a) or (1)(b)(i) is a second degree felony.

(b) A violation of Subsection (1)(b)(ii) is a third degree felony.

(c) A violation of Subsection (1)(b)(iii) is a class B misdemeanor.

(3) It is not a defense under this section that the person did not attempt to carry out or was incapable of carrying out the threat.

(4) A threat under this section may be express or implied.

(5) A person who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Amended by Chapter 39, 2013 General Session

76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.

(1) A person is guilty of hazing if that person intentionally, knowingly, or recklessly commits an act or causes another to commit an act that:

(a) (i) endangers the mental or physical health or safety of another;

(ii) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(iii) involves consumption of any food, alcoholic product, drug, or other substance or any other physical activity that endangers the mental or physical health and safety of an individual; or

(iv) involves any activity that would subject the individual to extreme mental stress, such as sleep deprivation, extended isolation from social contact, or conduct

that subjects another to extreme embarrassment, shame, or humiliation; and

(b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in, or as a condition for continued membership in any organization; or

(ii) if the actor knew that the victim is a member of or candidate for membership with a school team or school organization to which the actor belongs or did belong within the preceding two years.

(2) It is not a defense to prosecution of hazing that a person under 21, against whom the hazing was directed, consented to or acquiesced in the hazing activity.

(3) An actor who hazes another is guilty of a:

(a) class B misdemeanor except as provided in Subsection (3)(b), (c), (d), or (e);

(b) class A misdemeanor if the act involves:

(i) the operation or other use of a motor vehicle;

(ii) the consumption of an alcoholic product as defined in Section 32B-1-102; or

(iii) the consumption of a drug or a substance as defined in Section 76-5-113;

(c) third degree felony if the act involves the use of a dangerous weapon as defined in Section 76-1-601;

(d) third degree felony if the hazing results in serious bodily injury to a person; or

(e) second degree felony if hazing under Subsection (3)(d) involves the use of a dangerous weapon as defined in Section 76-1-601.

(4) A person who in good faith reports or participates in reporting of an alleged hazing is not subject to any civil or criminal liability regarding the reporting.

(5) (a) This section does not apply to military training or other official military activities.

(b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

(6) (a) A prosecution under this section does not bar a prosecution of the actor for:

(i) any other offense for which the actor may be liable as a party for conduct committed by the person hazed; or

(ii) any offense, caused in the course of the hazing, that the actor commits against the person who is hazed.

(b) Under Subsection (6)(a)(i) a person may be separately punished, both for the hazing offense and the conduct committed by the person hazed.

(c) Under Subsection (6)(a)(ii) a person may not be punished both for hazing and for the other offense, but shall be punished for the offense carrying the greater maximum penalty.

Amended by Chapter 340, 2011 General Session

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; Title 78A, Chapter 6, Juvenile Court Act; Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or a foreign

protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with Section 77-36-1.1.

Amended by Chapter 196, 2013 General Session

76-5-109. Child abuse -- Child abandonment.

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.

(b) (i) "Child abandonment" means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C) (I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child;

or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) "Child abandonment" does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) "Enterprise" is as defined in Section 76-10-1602.

(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f) (i) "Serious physical injury" means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;

(C) causes serious emotional harm to the child; or

- (D) involves a substantial risk of death to the child.
- (ii) "Serious physical injury" includes:
 - (A) fracture of any bone or bones;
 - (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;
 - (C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;
 - (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
 - (E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;
 - (F) any damage to internal organs of the body;
 - (G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;
 - (H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;
 - (I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or
 - (J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.
- (2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:
 - (a) if done intentionally or knowingly, the offense is a felony of the second degree;
 - (b) if done recklessly, the offense is a felony of the third degree; or
 - (c) if done with criminal negligence, the offense is a class A misdemeanor.
- (3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:
 - (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
 - (b) if done recklessly, the offense is a class B misdemeanor; or
 - (c) if done with criminal negligence, the offense is a class C misdemeanor.
- (4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:
 - (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or
 - (b) guilty of a felony of the second degree, if, as a result of the child abandonment:
 - (i) the child suffers a serious physical injury; or
 - (ii) the person or enterprise receives, directly or indirectly, any benefit.
- (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of

investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

Amended by Chapter 366, 2011 General Session

76-5-109.1. Commission of domestic violence in the presence of a child.

(1) As used in this section:

(a) "Cohabitant" has the same meaning as defined in Section 78B-7-102.

(b) "Domestic violence" has the same meaning as in Section 77-36-1.

(c) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) A person commits domestic violence in the presence of a child if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree

felony.

(b) A person who violates Subsection (2)(c) is guilty of a class B misdemeanor.

(4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

(5) A person who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child regarding each child present when the violation occurred.

Amended by Chapter 70, 2009 General Session

76-5-110. Abuse or neglect of a child with a disability.

(1) As used in this section:

(a) "Abuse" means:

(i) inflicting physical injury, as that term is defined in Section 76-5-109;

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) "Child with a disability" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child with a disability is guilty of a third degree felony.

(3) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

(b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best

interest of the child with a disability.

Amended by Chapter 366, 2011 General Session

76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.

(1) As used in this section:

(a) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(b) "Abuse" means:

(i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

(ii) causing physical injury by knowing or intentional acts or omissions;

(iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or

(iv) deprivation of life-sustaining treatment, except:

(A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(B) when informed consent, as defined in this section, has been obtained.

(c) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.

(d) (i) "Caretaker" means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities.

(ii) "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.

(e) "Deception" means:

(i) a misrepresentation or concealment:

(A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;

(B) of the terms of a contract or agreement entered into with a vulnerable adult; or

(C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or

(ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

(f) "Elder adult" means a person 65 years of age or older.

(g) "Endeavor" means to attempt or try.

(h) "Exploitation" means an offense described in Subsection (4) or Section 76-5b-202.

(i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

(j) "Informed consent" means:

(i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or

(ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.

(k) "Intimidation" means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or harm.

(l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(ii) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(m) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.

(n) "Neglect" means:

(i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter,

cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or

(v) abandonment by a caretaker.

(o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition.

"Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

(p) "Position of trust and confidence" means the position of a person who:

(i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable adult;

(ii) is a joint tenant or tenant in common with a vulnerable adult;

(iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(iv) is a caretaker of a vulnerable adult.

(q) "Serious physical injury" means any physical injury or set of physical injuries that:

(i) seriously impairs a vulnerable adult's health;

(ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

(iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

(iv) creates a reasonable risk of death.

(r) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(s) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or medical or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) carry out the activities of daily living;

(v) manage the adult's own resources; or

(vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious

physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a second degree felony;
- (b) if done recklessly, the offense is third degree felony; and
- (c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) if done recklessly, the offense is a class B misdemeanor; and
- (c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.

(b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;

(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

(iii) if done recklessly, the offense is a class A misdemeanor; or

- (iv) if done with criminal negligence, the offense is a class B misdemeanor.
- (5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.
- (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 320, 2011 General Session

76-5-111.1. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.

(1) As provided in Section 62A-3-305, any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify the nearest peace officer, law enforcement agency, or Adult Protective Services intake within the Department of Human Services, Division of Aging and Adult Services.

(2) Anyone who makes that report in good faith to a law enforcement agency, the Division of Aging and Adult Services, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(3) (a) When the initial report is made to a peace officer or law enforcement agency, the officer or law enforcement agency shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their investigations and provide protection to the vulnerable adult as necessary.

(b) Adult Protective Services will notify the Long-Term Care Ombudsman, as defined in Section 62A-3-202, when the initial report to Adult Protective Services involves a resident of a long-term care facility as defined in Section 62A-3-202. The Long-Term Care Ombudsman and Adult Protective Services shall coordinate, as appropriate, in conducting their investigations.

(c) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult, Adult Protective Services shall immediately notify the nearest local law enforcement agency. That law enforcement agency shall initiate an investigation in cooperation with Adult Protective Services.

(4) A person who is required to report suspected abuse, neglect, or exploitation of a vulnerable adult under Subsection (1), and who willfully fails to do so, is guilty of a class B misdemeanor.

(5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) The physician-patient privilege does not constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of those injuries, in any

judicial or administrative proceeding resulting from a report made in good faith pursuant to this part.

(7) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 50, 2004 General Session

76-5-112. Reckless endangerment -- Penalty.

(1) A person commits reckless endangerment if, under circumstances not amounting to a felony offense, the person recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to another person.

(2) Reckless endangerment is a class A misdemeanor.

Enacted by Chapter 66, 1999 General Session

76-5-112.5. Endangerment of a child or vulnerable adult.

(1) As used in this section:

(a) (i) "Chemical substance" means:

(A) a substance intended to be used as a precursor in the manufacture of a controlled substance;

(B) a substance intended to be used in the manufacture of a controlled substance; or

(C) any fumes or by-product resulting from the manufacture of a controlled substance.

(ii) Intent under this Subsection (1)(a) may be demonstrated by:

(A) the use, quantity, or manner of storage of the substance; or

(B) the proximity of the substance to other precursors or to manufacturing equipment.

(b) "Child" means a human being who is under 18 years of age.

(c) "Controlled substance" is as defined in Section 58-37-2.

(d) "Drug paraphernalia" is as defined in Section 58-37a-3.

(e) "Exposed to" means that the child or vulnerable adult:

(i) is able to access or view an unlawfully possessed:

(A) controlled substance; or

(B) chemical substance;

(ii) has the reasonable capacity to access drug paraphernalia; or

(iii) is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance.

(f) "Prescription" is as defined in Section 58-37-2.

(g) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

(2) Unless a greater penalty is otherwise provided by law:

(a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the third degree if the person knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled

substance, chemical substance, or drug paraphernalia;

(b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second degree, if:

(i) the person engages in the conduct described in Subsection (2)(a); and

(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or

(c) a person is guilty of a felony of the first degree, if:

(i) the person engages in the conduct described in Subsection (2)(a); and

(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult dies.

(3) It is an affirmative defense to a violation of this section that the controlled substance:

(a) was obtained by lawful prescription; and

(b) is used or possessed by the person to whom it was lawfully prescribed.

(4) The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions.

Amended by Chapter 320, 2011 General Session

76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverage" in Section 32B-1-102.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

(d) "Controlled substance" has the same definition as in Section 58-37-2.

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(g) "Prescription drug" has the same definition as in Section 58-17b-102.

(h) "Serious bodily injury" has the same definition as in Section 19-2-115.

(i) "Substance" means a controlled substance, poisonous substance, or deleterious substance as defined in this Subsection (1).

(2) In addition to any other offense the actor's conduct may constitute, it is a criminal offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause another person to unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance,

regardless of whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; and

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that the actor's conduct was in the best interest of the well-being of the person to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This notice shall be filed or served not more than 10 days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) This section does not diminish the scope of authorized health care by a health care provider as defined in Section 26-23a-1.

Amended by Chapter 276, 2010 General Session

76-5-201. Criminal homicide -- Elements -- Designations of offenses -- Exceptions.

(1) (a) Except as provided in Subsections (3) and (4), a person commits criminal homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child at any stage of its development.

(b) There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion, as defined in Section 76-7-301.

(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide.

(3) A person is not guilty of criminal homicide of an unborn child if the sole reason for the death of the unborn child is that the person:

(a) refused to consent to:

- (i) medical treatment; or
- (ii) a cesarean section; or
- (b) failed to follow medical advice.
- (4) A woman is not guilty of criminal homicide of her own unborn child if the death of her unborn child:
 - (a) is caused by a criminally negligent act or reckless act of the woman; and
 - (b) is not caused by an intentional or knowing act of the woman.

Amended by Chapter 13, 2010 General Session

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(g) the homicide was committed for pecuniary gain;

(h) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(i) the actor previously committed or was convicted of:

(i) aggravated murder under this section;

(ii) attempted aggravated murder under this section;

(iii) murder, Section 76-5-203;

(iv) attempted murder, Section 76-5-203; or

(v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);

- (j) the actor was previously convicted of:
 - (i) aggravated assault, Subsection 76-5-103(2);
 - (ii) mayhem, Section 76-5-105;
 - (iii) kidnapping, Section 76-5-301;
 - (iv) child kidnapping, Section 76-5-301.1;
 - (v) aggravated kidnapping, Section 76-5-302;
 - (vi) rape, Section 76-5-402;
 - (vii) rape of a child, Section 76-5-402.1;
 - (viii) object rape, Section 76-5-402.2;
 - (ix) object rape of a child, Section 76-5-402.3;
 - (x) forcible sodomy, Section 76-5-403;
 - (xi) sodomy on a child, Section 76-5-403.1;
 - (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
 - (xiii) aggravated sexual assault, Section 76-5-405;
 - (xiv) aggravated arson, Section 76-6-103;
 - (xv) aggravated burglary, Section 76-6-203;
 - (xvi) aggravated robbery, Section 76-6-302;
 - (xvii) felony discharge of a firearm, Section 76-10-508.1; or
 - (xviii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);
- (k) the homicide was committed for the purpose of:
 - (i) preventing a witness from testifying;
 - (ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
 - (iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
 - (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- (l) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
- (m) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;
- (n) the homicide was committed:
 - (i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered; or
 - (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- (o) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any

passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(p) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(r) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim, at the time of the death of the victim:

(i) was younger than 14 years of age; and

(ii) was not an unborn child.

(2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

(a) child abuse, Subsection 76-5-109(2)(a);

(b) child kidnapping, Section 76-5-301.1;

(c) rape of a child, Section 76-5-402.1;

(d) object rape of a child, Section 76-5-402.3;

(e) sodomy on a child, Section 76-5-403.1; or

(f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.

(ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(e) If the defendant was younger than 18 years of age at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(4) (a) It is an affirmative defense to a charge of aggravated murder or

attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

(5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.

(b) A person who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 81, 2013 General Session

76-5-203. Murder.

(1) As used in this section, "predicate offense" means:

(a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

(b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;

(c) kidnapping under Section 76-5-301;

(d) child kidnapping under Section 76-5-301.1;

(e) aggravated kidnapping under Section 76-5-302;

(f) rape of a child under Section 76-5-402.1;

(g) object rape of a child under Section 76-5-402.3;

(h) sodomy upon a child under Section 76-5-403.1;

(i) forcible sexual abuse under Section 76-5-404;

(j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;

(k) rape under Section 76-5-402;

(l) object rape under Section 76-5-402.2;

(m) forcible sodomy under Section 76-5-403;

(n) aggravated sexual assault under Section 76-5-405;

(o) arson under Section 76-6-102;

(p) aggravated arson under Section 76-6-103;

(q) burglary under Section 76-6-202;

(r) aggravated burglary under Section 76-6-203;

(s) robbery under Section 76-6-301;

(t) aggravated robbery under Section 76-6-302;

(u) escape or aggravated escape under Section 76-8-309; or

(v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.

- (2) Criminal homicide constitutes murder if:
- (a) the actor intentionally or knowingly causes the death of another;
 - (b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;
 - (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
 - (d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;
 - (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and
 - (iii) the actor acted with the intent required as an element of the predicate offense;
 - (e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:
 - (i) an assault against a peace officer under Section 76-5-102.4;
 - (ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against a peace officer; or
 - (iii) an assault against a military service member in uniform under Section 76-5-102.4;
 - (f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or
 - (g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.
- (3) (a) Murder is a first degree felony.
- (b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.
- (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
- (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
- (c) This affirmative defense reduces charges only from:
- (i) murder to manslaughter; and
 - (ii) attempted murder to attempted manslaughter.
- (5) (a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.
- (b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 125, 2009 General Session
Amended by Chapter 206, 2009 General Session

76-5-204. Death of other than intended victim no defense.

In any prosecution for criminal homicide, evidence that the actor caused the death of a person other than the intended victim shall not constitute a defense for any purpose to criminal homicide.

Enacted by Chapter 196, 1973 General Session

76-5-205. Manslaughter.

(1) Criminal homicide constitutes manslaughter if the actor:
(a) recklessly causes the death of another;
(b) commits a homicide which would be murder, but the offense is reduced pursuant to Subsection 76-5-203(4); or

(c) commits murder, but special mitigation is established under Section 76-5-205.5.

(2) Manslaughter is a felony of the second degree.

(3) (a) In addition to the penalty provided under this section or any other section, a person who is convicted of violating this section shall have the person's driver license revoked under Section 53-3-220 if the death of another person results from driving a motor vehicle.

(b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

Amended by Chapter 157, 2010 General Session

76-5-205.5. Special mitigation reducing the level of criminal homicide offense -- Burden of proof -- Application to reduce offense.

(1) Special mitigation exists when the actor causes the death of another or attempts to cause the death of another:

(a) (i) under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305;

(ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and

(iii) the defendant's actions, in light of the delusion, were reasonable from the objective viewpoint of a reasonable person; or

(b) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.

(2) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (1)(a) on the basis of mental illness if the alcohol or substance caused, triggered, or substantially

contributed to the mental illness.

(3) Under Subsection (1)(b), emotional distress does not include:

(a) a condition resulting from mental illness as defined in Section 76-2-305; or

(b) distress that is substantially caused by the defendant's own conduct.

(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(5) (a) If the trier of fact finds the elements of an offense as listed in Subsection (5)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (5)(b).

(b) If under Subsection (5)(a) the offense is:

(i) aggravated murder, the defendant shall instead be found guilty of murder;

(ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;

(iii) murder, the defendant shall instead be found guilty of manslaughter; or

(iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

(6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.

(b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (5).

(c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution has established all the elements beyond a reasonable doubt.

(d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a hung jury.

(7) (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.

(8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

Amended by Chapter 206, 2009 General Session

76-5-206. Negligent homicide.

(1) Criminal homicide constitutes negligent homicide if the actor, acting with criminal negligence, causes the death of another.

(2) Negligent homicide is a class A misdemeanor.

(3) (a) In addition to the penalty provided under this section or any other section, a person who is convicted of violating this section shall have the person's driver license revoked under Section 53-3-220 if the death of another person results

from driving a motor vehicle.

(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Amended by Chapter 157, 2010 General Session

76-5-207. Automobile homicide.

(1) As used in this section:

(a) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) As used in this Subsection (3), "criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section

41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(1).

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

Amended by Chapter 214, 2009 General Session

76-5-207.5. Automobile homicide involving using a handheld wireless communication device while driving.

(1) As used in this section:

(a) "Criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(b) "Handheld wireless communication device" has the same meaning as defined in Section 41-6a-1716.

(c) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(d) "Negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(2) Criminal homicide is automobile homicide, a third degree felony, if the person operates a moving motor vehicle in a negligent manner:

(a) while using a handheld wireless communication device in violation of Section 41-6a-1716; and

(b) causing the death of another person.

(3) Criminal homicide is automobile homicide, a second degree felony, if the person operates a moving motor vehicle in a criminally negligent manner:

(a) while using a handheld wireless communication device in violation of Section 41-6a-1716; and

(b) causing the death of another person.

Amended by Chapter 193, 2012 General Session

76-5-208. Child abuse homicide.

(1) Criminal homicide constitutes child abuse homicide if, under circumstances not amounting to aggravated murder, as described in Section 76-5-202, the actor causes the death of a person under 18 years of age and the death results from child abuse, as defined in Subsection 76-5-109(1):

- (a) if the child abuse is done recklessly under Subsection 76-5-109(2)(b);
 - (b) if the child abuse is done with criminal negligence under Subsection 76-5-109(2)(c); or
 - (c) if, under circumstances not amounting to the type of child abuse homicide described in Subsection (1)(a), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).
- (2) Child abuse homicide as described in Subsection (1)(a) is a first degree felony.
- (3) Child abuse homicide as described in Subsections (1)(b) and (c) is a second degree felony.

Amended by Chapter 152, 2008 General Session

76-5-209. Homicide by assault -- Penalty.

- (1) A person commits homicide by assault if, under circumstances not amounting to aggravated murder, murder, or manslaughter, a person causes the death of another while intentionally or knowingly attempting, with unlawful force or violence, to do bodily injury to another.
- (2) Homicide by assault is a third degree felony.

Enacted by Chapter 291, 1995 General Session

76-5-301. Kidnapping.

- (1) An actor commits kidnapping if the actor intentionally or knowingly, without authority of law, and against the will of the victim:
- (a) detains or restrains the victim for any substantial period of time;
 - (b) detains or restrains the victim in circumstances exposing the victim to risk of bodily injury;
 - (c) holds the victim in involuntary servitude;
 - (d) detains or restrains a minor without the consent of the minor's parent or legal guardian or the consent of a person acting in loco parentis, if the minor is 14 years of age or older but younger than 18 years of age; or
 - (e) moves the victim any substantial distance or across a state line.
- (2) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.
- (3) Kidnapping is a second degree felony.

Amended by Chapter 301, 2001 General Session

76-5-301.1. Child kidnapping.

- (1) An actor commits child kidnapping if the actor intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis.

- (2) Violation of Section 76-5-303 is not a violation of this section.
- (3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:
 - (a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;
 - (b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the child kidnapping the defendant caused serious bodily injury to another; or
 - (c) life without parole, if the trier of fact finds that at the time of the commission of the child kidnapping the defendant was previously convicted of a grievous sexual offense.
- (4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or
 - (b) for purposes of Subsection (3)(a) or (b):
 - (i) 10 years and which may be for life; or
 - (ii) six years and which may be for life.
- (5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).
- (6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.
- (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-302. Aggravated kidnapping.

- (1) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:
 - (a) possesses, uses, or threatens to use a dangerous weapon as defined in Section 76-1-601; or
 - (b) acts with intent:
 - (i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;
 - (ii) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;
 - (iii) to hinder or delay the discovery of or reporting of a felony;
 - (iv) to inflict bodily injury on or to terrorize the victim or another;
 - (v) to interfere with the performance of any governmental or political function; or
 - (vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- (2) As used in this section, "in the course of committing unlawful detention or

kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

- (a) Section 76-5-301, kidnapping; or
- (b) Section 76-5-304, unlawful detention.

(3) Aggravated kidnapping is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) for purposes of Subsection (3)(b), 15 years and which may be for life; or
- (b) for purposes of Subsection (3)(a) or (b):
 - (i) 10 years and which may be for life; or
 - (ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-303. Custodial interference.

(1) As used in this section:

- (a) "Child" means a person under the age of 18.
- (b) "Custody" means court-ordered physical custody entered by a court of competent jurisdiction.
- (c) "Visitation" means court-ordered parent-time or visitation entered by a court of competent jurisdiction.

(2) (a) A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child, with the intent to interfere with the visitation of the child.

(b) A person who is entitled to visitation of a child is guilty of custodial interference if, during a period of time when the person is not entitled to visitation of the

child, the person takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody of the child, with the intent to interfere with the custody of the child.

(3) Except as provided in Subsection (4) or (5), custodial interference is a class B misdemeanor.

(4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty of a class A misdemeanor if the actor:

(a) commits custodial interference; and

(b) has been convicted of custodial interference at least twice in the two-year period immediately preceding the day on which the commission of custodial interference described in Subsection (4)(a) occurs.

(5) Custodial interference is a felony of the third degree if, during the course of the custodial interference, the actor described in Subsection (2) removes, causes the removal, or directs the removal of the child from the state.

(6) In addition to the affirmative defenses described in Section 76-5-305, it is an affirmative defense to the crime of custodial interference that:

(a) the action is consented to by the person whose custody or visitation of the child was interfered with; or

(b) (i) the action is based on a reasonable belief that the action is necessary to protect a child from abuse, including sexual abuse; and

(ii) before engaging in the action, the person reports the person's intention to engage in the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of Child and Family Services or law enforcement.

(7) In addition to the other penalties described in this section, a person who is convicted of custodial interference is subject to the driver license suspension provisions of Subsection 53-3-220(1)(a)(xviii).

Repealed and Re-enacted by Chapter 374, 2010 General Session

76-5-303.5. Notification of conviction of custodial interference.

(1) As used in this section:

(a) "Convicted" means that a person has received a conviction.

(b) "Conviction" is as defined in Section 53-3-102.

(2) If a person is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

(a) a class B misdemeanor, under Subsection 76-5-303(3);

(b) a class A misdemeanor, under Subsection 76-5-303(4); or

(c) a felony, under Subsection 76-5-303(5).

Enacted by Chapter 374, 2010 General Session

76-5-304. Unlawful detention and unlawful detention of a minor.

(1) An actor commits unlawful detention if the actor intentionally or knowingly, without authority of law, and against the will of the victim, detains or restrains the victim

under circumstances not constituting a violation of:

- (a) kidnapping, Section 76-5-301;
- (b) child kidnapping, Section 76-5-301.1; or
- (c) aggravated kidnapping, Section 76-5-302.

(2) An actor commits unlawful detention of a minor if the actor intentionally or knowingly, without authority of law, and against the will of the victim, coerces or exerts influence over the victim with the intent to cause the victim to remain with the actor for an unreasonable period of time under the circumstances, and:

(a) the act is under circumstances not constituting a violation of:

- (i) kidnapping, Section 76-5-301;
- (ii) child kidnapping, Section 76-5-301.1; or
- (iii) aggravated kidnapping, Section 76-5-302; and

(b) the actor is at least four or more years older than the victim.

(3) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is:

- (a) a mentally incompetent person; or
 - (b) a minor who is 14 or 15 years of age.
- (4) Unlawful detention is a class B misdemeanor.

Amended by Chapter 39, 2012 General Session

76-5-305. Defenses.

It is a defense under this part that:

(1) the actor was acting under a reasonable belief that:

(a) the conduct was necessary to protect any person from imminent bodily injury or death; or

(b) the detention or restraint was authorized by law; or

(2) the alleged victim is younger than 18 years of age or is mentally incompetent, and the actor was acting under a reasonable belief that the custodian, guardian, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor's conduct.

Enacted by Chapter 301, 2001 General Session

76-5-306. Lesser included offenses.

In this part, the following offenses are lesser included offenses of Section 76-5-302, aggravated kidnapping:

- (1) Section 76-5-301, kidnapping; and
- (2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

Amended by Chapter 39, 2012 General Session

76-5-307. Definitions.

As used in Sections 76-5-308 through 76-5-310 of this part:

- (1) "Child" means a person younger than 18 years of age.

- (2) "Commercial purpose" includes direct or indirect participation in or facilitation of the transportation of one or more persons for the purpose of:
- (a) charging or obtaining a fee for the transportation; or
 - (b) obtaining, exchanging, or receiving any thing or item of value or an attempt to conduct any of these activities.
- (3) "Facilitation" regarding transportation under Subsection (2) includes providing:
- (a) travel arrangement services;
 - (b) payment for the costs of travel; or
 - (c) property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making lodging available, including by rent, lease, or sale.
- (4) "Family member" means a person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree.

Amended by Chapter 196, 2013 General Session

Amended by Chapter 278, 2013 General Session

76-5-308. Human trafficking -- Human smuggling.

- (1) An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or coercion by means of:
- (a) threatening serious harm to, or physical restraint against, that person or a third person;
 - (b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government identification document;
 - (c) abusing or threatening abuse of the law or legal process against the person or a third person;
 - (d) using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or
 - (e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.
- (2) (a) Human trafficking for forced labor includes forced labor in industrial facilities, sweatshops, households, agricultural enterprises, and any other workplace.
- (b) Human trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity, including forced sexually explicit performance, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing or display.
- (3) A person commits human smuggling by transporting or procuring the transportation for one or more persons for a commercial purpose, knowing or having

reason to know that the person or persons transported or to be transported are not:

- (a) citizens of the United States;
- (b) permanent resident aliens; or
- (c) otherwise lawfully in this state or entitled to be in this state.

Amended by Chapter 196, 2013 General Session

76-5-309. Human trafficking and human smuggling -- Penalties.

(1) Human trafficking for forced labor and human trafficking for forced sexual exploitation are each a second degree felony, except under Section 76-5-310.

(2) Human smuggling, under Section 76-5-308 of one or more persons is a third degree felony, except under Section 76-5-310.

(3) Human trafficking for forced labor or for forced sexual exploitation and human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.

(4) Under circumstances not amounting to aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4)(h), a person who benefits, receives, or exchanges anything of value from knowing participation in:

(a) human trafficking for forced labor or for forced sexual exploitation in violation of Section 76-5-308 is guilty of a second degree felony; and

(b) human smuggling is guilty of a third degree felony.

(5) A person commits a separate offense of human trafficking or human smuggling for each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

Amended by Chapter 135, 2014 General Session

Amended by Chapter 141, 2014 General Session

76-5-310. Aggravated human trafficking and aggravated human smuggling -- Penalties.

(1) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation or aggravated human smuggling if, in the course of committing a human trafficking for forced labor or for forced sexual exploitation, a violation of Section 76-5-308, or human smuggling offense under Section 76-5-308, the offense:

(a) results in the death of the trafficked or smuggled person;

(b) results in serious bodily injury of the trafficked or smuggled person;

(c) involves:

(i) rape under Section 76-5-402;

(ii) rape of a child under Section 76-5-402.1;

(iii) object rape under Section 76-5-402.2;

(iv) object rape of a child under Section 76-5-402.3;

(v) forcible sodomy under Section 76-5-403;

(vi) sodomy on a child under Section 76-5-403.1;

(vii) aggravated sexual abuse of a child under Section 76-5-404.1; or

(viii) aggravated sexual assault under 76-5-405;

(d) involves 10 or more victims in a single episode of human trafficking or human smuggling; or

(e) involves a victim who is held against the victim's will for longer than 30 consecutive days.

(2) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a child for forced labor or forced sexual exploitation.

(3) An actor commits aggravated human smuggling if the actor commits human smuggling under Section 76-5-308 and any human being whom the person engages in smuggling is:

(a) a child; and

(b) not accompanied by a family member who is 18 years of age or older.

(4) (a) Aggravated human trafficking is a first degree felony.

(b) Aggravated human smuggling is a second degree felony.

(c) Aggravated human trafficking and aggravated human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.

Amended by Chapter 196, 2013 General Session

76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) A violation of Subsection (2) is a third degree felony unless the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.

Repealed and Re-enacted by Chapter 82, 1998 General Session

76-5-401.1. Sexual abuse of a minor.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits sexual abuse of a minor if the person is seven years or more older than the minor or holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) (a) A violation of this section is a class A misdemeanor, except under Subsection (3)(b).

(b) A violation of this section is a third degree felony if the actor at the time of the commission of the offense:

- (i) is 18 years of age or older;
- (ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(c)(xix); and
- (iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

Amended by Chapter 135, 2014 General Session

76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.

(1) As used in this section, "minor" means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct described in Subsection (2) occurred.

(2) (a) A person commits unlawful sexual conduct with a minor if, under circumstances not amounting to an offense listed under Subsection (3), a person who is:

- (i) seven or more years older but less than 10 years older than the minor at the time of the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or reasonably should have known the age of the minor;
- (ii) 10 or more years older than the minor at the time of the sexual conduct and engages in any conduct listed in Subsection (2)(b); or
- (iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix).

(b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:

- (i) has sexual intercourse with the minor;
- (ii) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;
- (iii) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or
- (iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) The offenses referred to in Subsection (2) are:

- (a) (i) rape, in violation of Section 76-5-402;
- (ii) object rape, in violation of Section 76-5-402.2;
- (iii) forcible sodomy, in violation of Section 76-5-403;
- (iv) forcible sexual abuse, in violation of Section 76-5-404; or
- (v) aggravated sexual assault, in violation of Section 76-5-405; or
- (b) an attempt to commit any offense under Subsection (3)(a).

(4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

(5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under Subsection (5)(b).

(b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time of the commission of the offense:

- (i) is 18 years of age or older;
- (ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(c)(xix); and
- (iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

Amended by Chapter 135, 2014 General Session

76-5-402. Rape.

(1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent.

(2) This section applies whether or not the actor is married to the victim.

(3) Rape is a felony of the first degree, punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:

- (i) during the course of the commission of the rape the defendant caused serious bodily injury to another; or
- (ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or
- (c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.
- (4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) 10 years and which may be for life; or
 - (b) six years and which may be for life.
- (5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(a) or (c).
- (6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.1. Rape of a child.

- (1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.
- (2) Rape of a child is a first degree felony punishable by a term of imprisonment of:
 - (a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or
 - (b) life without parole, if the trier of fact finds that:
 - (i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or
 - (ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.
- (3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.
- (4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.2. Object rape.

- (1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is a first degree felony, punishable by a term of

imprisonment of:

(a) except as provided in Subsection (1)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the object rape the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the object rape, the defendant was previously convicted of a grievous sexual offense.

(2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser term than the term described in Subsection (1)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(3) The provisions of Subsection (2) do not apply when a person is sentenced under Subsection (1)(a) or (c).

(4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.3. Object rape of a child -- Penalty.

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b) not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-403. Sodomy -- Forcible sodomy.

(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

(2) A person commits forcible sodomy when the actor commits sodomy upon another without the other's consent.

(3) Sodomy is a class B misdemeanor.

(4) Forcible sodomy is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (4)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.

(5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser term than the term described in Subsection (4)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(6) The provisions of Subsection (5) do not apply when a person is sentenced under Subsection (4)(a) or (c).

(7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-403.1. Sodomy on a child.

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-404. Forcible sexual abuse.

(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.

(2) Forcible sexual abuse is:

(a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or

(b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.

(3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 218, 2010 General Session

76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

(b) "Child" means an individual under the age of 14.

(c) "Position of special trust" means:

(i) an adoptive parent;

(ii) an athletic manager who is an adult;

(iii) an aunt;

- (iv) a babysitter;
- (v) a coach;
- (vi) a cohabitant of a parent if the cohabitant is an adult;
- (vii) a counselor;
- (viii) a doctor or physician;
- (ix) an employer;
- (x) a foster parent;
- (xi) a grandparent;
- (xii) a legal guardian;
- (xiii) a natural parent;
- (xiv) a recreational leader who is an adult;
- (xv) a religious leader;
- (xvi) a sibling or a stepsibling who is an adult;
- (xvii) a scout leader who is an adult;
- (xviii) a stepparent;
- (xix) a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;
- (xx) an uncle;
- (xxi) a youth leader who is an adult; or
- (xxii) any person in a position of authority, other than those persons listed in Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over the child.

(2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) Sexual abuse of a child is a second degree felony.

(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;

(f) the accused committed the same or similar sexual act upon two or more

victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by a person who occupied a position of special trust in relation to the victim;

(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;

(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.

(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (5)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c).

(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 135, 2014 General Session

Amended by Chapter 141, 2014 General Session

76-5-405. Aggravated sexual assault -- Penalty.

(1) A person commits aggravated sexual assault if:

(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:

(i) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iii) is aided or abetted by one or more persons;

(b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons; or

(c) in the course of an attempted forcible sexual abuse, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of:

(a) for an aggravated sexual assault described in Subsection (1)(a):

(i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

(b) for an aggravated sexual assault described in Subsection (1)(b):

(i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or

(c) for an aggravated sexual assault described in Subsection (1)(c):

(i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

(3) (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a

term of imprisonment of not less than:

- (i) 10 years and which may be for life; or
- (ii) six years and which may be for life.

(b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under Subsection (2)(a)(ii).

(4) (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

(b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).

(5) (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.

(b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).

(6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-406. Sexual offenses against the victim without consent of victim -- Circumstances.

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;

(3) the actor is able to overcome the victim through concealment or by the element of surprise;

(4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or

(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;

(b) as used in this Subsection (4), "to retaliate" includes threats of physical force, kidnapping, or extortion;

(5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;

(6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;

(7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;

(8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;

(9) the victim is younger than 14 years of age;

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) "health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

Amended by Chapter 135, 2014 General Session

Amended by Chapter 141, 2014 General Session

76-5-406.3. Applicability of sentencing provisions.

A person convicted of a violation of Section 76-5-301.1, child kidnapping; Section 76-5-302, aggravated kidnapping; Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; Section 76-5-404.1, aggravated sexual abuse of a child; or Section 76-5-405, aggravated sexual assault shall be sentenced as follows:

(1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in accordance with the statutory provisions in effect prior to that date.

(2) If the person commits the crime and is sentenced on or after April 29, 1996, he shall be punished in accordance with the statutory provisions in effect after April 29, 1996.

(3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after April 29, 1996, he shall be given the option prior to sentencing to proceed either under the law which was in effect at the time the offense was committed or the law which was in effect at the time of sentencing. If the person refuses to select, the court shall sentence the person in accordance with the law in effect at the time of sentencing. The provisions of Subsections 77-27-9(2)(a) and (b) apply to the sentence of any person who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

Enacted by Chapter 40, 1996 General Session

76-5-406.5. Circumstances required for probation or suspension of sentence for certain sex offenses against a child.

(1) In a case involving a conviction for a violation of Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; or any attempt to commit a felony under those sections or a conviction for a violation of Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child, the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:

(a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;

(b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;

(c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;

(d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;

(e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;

(f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;

(g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child victim before any other person;

(h) the defendant admits the offense of which he has been convicted and has been accepted for mental health treatment in a residential sexual abuse treatment center that has been approved by the Department of Corrections under Subsection (3);

(i) rehabilitation of the defendant through treatment is probable, based upon evidence provided by a treatment professional who has been approved by the Department of Corrections under Subsection (3) and who has accepted the defendant for treatment;

(j) prior to being sentenced, the defendant has undergone a complete psychological evaluation conducted by a professional approved by the Department of Corrections and:

(i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an immediate and present danger to the community if released on probation and placed in a residential sexual abuse treatment center; and

(ii) the court accepts the opinion of the professional;

(k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian of the child victim, the defendant shall, in addition to establishing all other conditions of this section, establish it is in the child victim's best interest that the defendant not be imprisoned, by presenting evidence provided by a treatment professional who:

(i) is treating the child victim and understands he will be treating the family as a whole; or

(ii) has assessed the child victim for purposes of treatment as ordered by the court based on a showing of good cause; and

(l) if probation is imposed, the defendant, as a condition of probation, may not reside in a home where children younger than 18 years of age reside for at least one year beginning with the commencement of treatment, and may not again take up residency in a home where children younger than 18 years of age reside during the period of probation until allowed to do so by order of the court.

(2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of 10 years.

(3) (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.

(b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.

(4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses

against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:

- (a) the nature, frequency, and duration of the conduct;
- (b) the effects of the conduct on any child victim involved;
- (c) the best interest of the public and any child victim; and
- (d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.

(5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.

(6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.

(7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.

(8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

Amended by Chapter 213, 2004 General Session

76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to constitute offense.

(1) The provisions of this part do not apply to consensual conduct between persons married to each other.

(2) In any prosecution for:

(a) the following offenses, any sexual penetration, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving sexual intercourse;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Subsection 76-5-401.2, involving sexual intercourse; or

(iii) rape, a violation of Section 76-5-402; or

(b) the following offenses, any touching, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving acts of sodomy;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section 76-5-401.2, involving acts of sodomy;

(iii) sodomy, a violation of Subsection 76-5-403(1);

(iv) forcible sodomy, a violation of Subsection 76-5-403(2);

(v) rape of a child, a violation of Section 76-5-402.1; or

(vi) object rape of a child, a violation of Section 76-5-402.3.

(3) In any prosecution for the following offenses, any touching, even if

accomplished through clothing, is sufficient to constitute the relevant element of the offense:

- (a) sodomy on a child, a violation of Section 76-5-403.1; or
- (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section 76-5-404.1.

Amended by Chapter 128, 2000 General Session

76-5-409. Corroboration of admission by child's statement.

(1) Notwithstanding any provision of law requiring corroboration of admissions or confessions, and notwithstanding any prohibition of hearsay evidence, a child's statement indicating in any manner the occurrence of the sexual offense involving the child is sufficient corroboration of the admission or the confession regardless of whether or not the child is available to testify regarding the offense.

(2) A child, for purposes of Subsection (1), is a person under the age of 14.

Enacted by Chapter 88, 1983 General Session

76-5-410. Child victim of sexual abuse as competent witness.

A child victim of sexual abuse under the age of 10 is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall determine the weight and credibility of the testimony.

Amended by Chapter 74, 1985 General Session

76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

- (a) "Actor" means:
 - (i) a correctional officer, as defined in Section 53-13-104;
 - (ii) a law enforcement officer, as defined in Section 53-13-103; or
 - (iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.
- (b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:
 - (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-15-601 or other medical facility;
 - (ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or
 - (iii) under lawful or unlawful arrest, either with or without a warrant.
- (c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under

state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

- (c) otherwise taking indecent liberties with a person in custody; or
- (d) causing a person in custody to take indecent liberties with the actor or another person.
- (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:
 - (a) Section 76-5-401, unlawful sexual activity with a minor;
 - (b) Section 76-5-402, rape;
 - (c) Section 76-5-402.1, rape of a child;
 - (d) Section 76-5-402.2, object rape;
 - (e) Section 76-5-402.3, object rape of a child;
 - (f) Section 76-5-403, forcible sodomy;
 - (g) Section 76-5-403.1, sodomy on a child;
 - (h) Section 76-5-404, forcible sexual abuse;
 - (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
 - (j) Section 76-5-405, aggravated sexual assault.
- (7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:
 - (i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the person in custody.
- (b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).
- (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Amended by Chapter 8, 2002 Special Session 5

76-5-413. Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses.

- (1) As used in this section:
 - (a) "Actor" means:
 - (i) a person employed by the Department of Human Services, as created in Section 62A-1-102, or an employee of a private provider or contractor; or
 - (ii) a person employed by the juvenile court of the state, or an employee of a private provider or contractor.
 - (b) "Department" means the Department of Human Services created in Section 62A-1-102.
 - (c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.
 - (d) "Private provider or contractor" means any person or entity that contracts with the:
 - (i) department to provide services or functions that are part of the operation of

the department; or

(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(e) "Youth receiving state services" means a person:

(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

(A) in the custody of the department under Subsection 78A-6-117(2)(c)(ii); or

(B) receiving services from any division of the department if any portion of the costs of these services is covered by public money as defined in Section 76-8-401; or

(ii) younger than 21 years of age who is:

(A) in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or

(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Amended by Chapter 3, 2008 General Session

76-5-414. Child conceived as a result of sexual offense -- Custody and parent-time.

(1) A person convicted of a violation of Title 76, Chapter 5, Part 4, Sexual Offenses, except for Sections 76-5-401 and 76-5-401.2, that results in conception of a child may not be granted custody or parent-time rights by a court regarding the child, unless:

(a) the nonconvicted biological parent or legal guardian of the child consents and the court determines it is in the best interest of the child to award custody or parent-time to the convicted person; or

(b) after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(2) A denial of custody or parent-time under this section may not in and of itself:

(a) terminate the parental rights of the person denied parent-time or custody; or

(b) affect the obligation of the convicted person to financially support the child.

Enacted by Chapter 193, 2013 General Session

76-5-415. Educator's license subject to action for violation of this part.

Commission of any offense under this Title 76, Chapter 5, Part 4, Sexual Offenses, by an educator as defined in Section 53A-6-103, is grounds under Section 53A-6-501 for disciplinary action against the educator, including revocation of the educator's license.

Enacted by Chapter 135, 2014 General Session

76-5-501. Definitions.

For purposes of this part:

(1) "Alleged sexual offender" means a person or a minor regarding whom an indictment, petition, or an information has been filed or an arrest has been made alleging the commission of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and regarding which:

(a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(b) the judge has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(2) "Department of Health" means the state Department of Health as defined in Section 26-1-2.

(3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or other method approved by the Utah State Health Laboratory.

Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

- (d) demonstration of HIV proviral DNA.
- (4) "HIV positive individual" means a person who is HIV positive as determined by the State Health Laboratory.
- (5) "Local department of health" means the department as defined in Subsection 26A-1-102(5).
- (6) "Minor" means a person younger than 18 years of age.
- (7) "Positive" means an indication of the HIV infection as defined in Subsection (3).
- (8) "Sexual offense" means a violation of state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses.
- (9) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health.

Amended by Chapter 177, 2011 General Session

76-5-502. Request for testing -- Mandatory testing -- Liability for costs.

(1) (a) An alleged victim of the sexual offense, the parent or guardian of an alleged victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined in Section 62A-3-301 may request that the alleged sexual offender against whom the indictment, information, or petition is filed or regarding whom the arrest has been made be tested to determine whether the alleged offender is an HIV positive individual.

(b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender be tested, the alleged offender shall submit to being tested not later than 48 hours after an information or indictment is filed or an order requiring a test is signed.

(c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be tested more than 48 hours after an information or indictment is filed, the offender shall submit to being tested not later than 24 hours after the request is made.

(d) As soon as practicable, the results of the test conducted pursuant to this section shall be provided to:

- (i) the alleged victim who requested the test;
- (ii) the parent or guardian of the alleged victim, if the alleged victim is a minor;
- (iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301;
- (iv) the alleged offender; and
- (v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(e) If follow-up testing is medically indicated, the results of follow-up testing of the defendant shall be sent as soon as practicable to:

- (i) the alleged victim;
- (ii) the parent or guardian of the alleged victim if the alleged victim is younger than 18 years of age;
- (iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as defined in Section 62A-3-301;
- (iv) the alleged offender; and

(v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(2) If the mandatory test has not been conducted, and the alleged offender or alleged minor offender is already confined in a county jail, state prison, or a secure youth corrections facility, the alleged offender shall be tested while in confinement.

(3) The secure youth corrections facility or county jail shall cause the blood specimen of the alleged offender under Subsection (1) confined in that facility to be taken and shall forward the specimen to the Department of Health.

(4) The Department of Corrections shall cause the blood specimen of the alleged offender defined in Subsection (1) confined in any state prison to be taken and shall forward the specimen to the Department of Health as provided in Section 64-13-36.

(5) The alleged offender who is tested is responsible upon conviction for the costs of testing, unless the alleged offender is indigent. The costs will then be paid by the Department of Health from the General Fund.

Amended by Chapter 177, 2011 General Session

76-5-503. Voluntary testing -- Victim to request -- Costs paid by Utah Office for Victims of Crime.

(1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5, Part 4, may request a test for the HIV infection.

(2) (a) The local health department shall obtain the blood specimen from the victim and forward the specimen to the Department of Health.

(b) The Department of Health shall analyze the specimen of the victim.

(3) The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense.

(4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if the victim provides a substantiated claim of the sexual offense, does not test HIV positive at the base-line testing phase, and complies with eligibility criteria established by the Utah Office for Victims of Crime.

Amended by Chapter 131, 2011 General Session

76-5-504. Victim notification and counseling.

(1) (a) The Department of Health shall provide the victim who requests testing of the alleged sexual offender's human immunodeficiency virus status counseling regarding HIV disease and referral for appropriate health care and support services.

(b) If the local health department in whose jurisdiction the victim resides and the Department of Health agree, the Department of Health shall forward a report of the alleged sexual offender's human immunodeficiency virus status to the local health department and the local health department shall provide the victim who requests the test with the test results, counseling regarding HIV disease, and referral for appropriate

health care and support services.

(2) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department acting pursuant to an agreement made under Subsection (1) may disclose to the victim the results of the alleged sexual offender's human immunodeficiency virus status as provided in this section.

Amended by Chapter 177, 2011 General Session